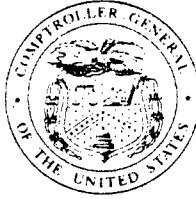


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200561

DATE: March 2, 1981

MATTER OF: Bentley, Inc.

[Protest of IFB Cancellation After Bid Opening]
DIGEST:

Canceled IFB should be reinstated and award made to the low responsive and responsible bidder where record does not show existence of compelling reason for cancellation.

Bentley, Inc. (Bentley) is protesting the cancellation after bid opening of invitation for bids (IFB) N62467-80-B-2531 by the Naval Facilities Engineering Command (Navy).

The solicitation was for the repair of windows in two buildings, Nos. 1 and 10, at the Jacksonville Naval Air Station. The work to be done at Building No. 10 never varied and is not relevant to the protest. Building No. 1 is a large, two-story building containing over 300 window openings. A drawing included with the IFB indicated what was to be done at each opening. Depending upon the symbol appearing on the drawing beside each opening, the opening was (1) to be permanently sealed ("blocked") by the application of exterior siding and interior wallboard matching the existing construction; or (2) was to receive a two-inch thick insulated steel panel; or (3) was to receive a double-hung aluminum window. The overall effect of the work was to reduce the amount of glass area in the exterior walls of the building.

Insofar as the description of work was concerned, it was initially described in the IFB as including, for Building No. 1, "providing new aluminum double glazed, double-hung windows and porcelain enamel [steel] insulated panels" and "the blocking in of indicated openings to match exterior and interior finishes."

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In the IFB, spaces were provided for three bid items which represented different combinations of single- or double-glazed window units and insulated metal panels. The original description of the bid items was changed by an amendment which also added explanatory notes to the drawings. As amended, the IFB stated the "Basis for Bid for Item 1 shall be a lump sum price for the entire work * * * but substituting single glazed windows for all window openings in Building 1 including openings indicated to have insulated metal panels." The description of Item 2 was built upon this description and that of Item 3 was built upon the description of Item 2. That is, bidders were advised that "Basis for bid for Item 2 shall be the addition of the following * * *: The basis for bid shall be same as Bid Item 1 but providing insulated metal panels in openings as indicated." Similarly, the basis for Bid Item 3 was to be the "same as Bid Item 2 but providing insulated glass as specified * * *."

Although there was a reference in the IFB Schedule to an Item 4, no description of it or space in which to price it was provided. The Navy concedes there was no Item 4 and the reference to it was in error. In addition, the solicitation advised bidders that bids would be evaluated in accordance with the standard "Additive or Deductive Items" clause contained in the IFB.

The bids on the three items were as follows:

	<u>Bid Item 1</u>	<u>Bid Item 2</u>	<u>Bid Item 3</u>
Bentley, Inc.	\$96,540	\$101,770	\$110,140
Gulfsouth Contractors	108,739	105,775	117,703
Jenkins Constr. Co.	114,776	6,211	11,615
C.W.C. Co.	159,300	5,000	3,800
Government estimate	96,000	101,300	121,300

The bid figures reveal two different methods of bidding. Bentley argues that it and Gulfsouth bid in the manner intended by the IFB: that is, entering under each item the total price for the entire project as built to

the specifications for that item. In contrast to Bentley and GulfSouth, Jenkins and C.W.C. appear to have treated Bid Item 1 as the "base bid item" and Bid Items 2 and 3 as additive items.

The Navy's reaction to this set of bids was to cancel the IFB in order to issue a revised solicitation. It took this action, the Navy states, because:

a. The work items were unclear and appeared to be inconsistent; for example, it was not clear to what extent the insulated metal panels were to be provided under Bid Items 1 and 2;

b. The reference to a Bid Item 4, when none was intended, may have confused bidders; and

c. The standard "Additive or Deductive Items" clause under which bids were to be evaluated did not contemplate cumulative bidding and the bids cannot be reconstructed without making assumptions as to bidders' intentions which it would be improper to permit them to confirm or deny after bid opening.

Bentley disagrees with each of the reasons given by the Navy, arguing that the specifications could be understood by a careful bidder, that the reference to a Bid Item 4 was not confusing (it was such an obvious error, Bentley states, that Bentley ignored it and presumes the other bidders did also since none bid on it) and that the bidders' prices for each item, whether additive or cumulative, could be easily determined from the face of the bids.

We do not find, as the Navy contends, that the specifications were "ambiguous as to whether [the insulated metal panels] are to be supplied in whole or in part under either item 1 or item 2 or whether bid item 2 supplements bid item 1 and if so to what extent." We have examined the description of the bid items, the notes added to the drawings and the drawings themselves. When these are read together, we believe the differences in the work to be accomplished under the three items becomes evident. Window openings marked on

the drawings to receive

	<u>Double-Hung Windows</u>	<u>Metal Panels</u>	<u>Blocking</u>
shall receive under			
<u>Item 1</u>	single-glazed windows	single-glazed windows	blocking
<u>Item 2</u>	single-glazed windows	metal panels	blocking
<u>Item 3</u>	double-glazed (insulated) windows	metal panels	blocking

In this regard, we note that none of the bidders has complained that it was confused by the specifications.

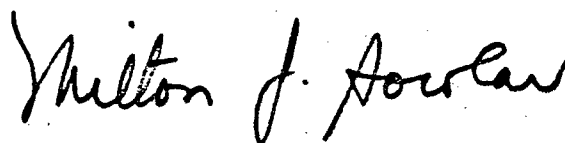
Further, the reference to a Bid Item 4 in the solicitation did not cause any demonstrable confusion, since no description of work accompanied it and no bidder entered a price beside it. We are inclined to believe that it was ignored by the bidders.

Finally, we think the bids can be ascertained without asking bidders to confirm their intention. We know of no reasonable construction of the bids other than two firms bid cumulatively and two additively: in fact, the Navy so characterized the bids in its report to our Office. Once that conclusion is reached, the amounts of the bids for each item can be readily computed. In addition, we note that Bentley is the low bidder for each of the three bid items. Cf. Paul N. Howard Company, 57 Comp. Gen. 73 (1977), 77-2 CPD 359.

Contracting officers have broad discretion in determining whether to cancel an invitation for bids after bids have been opened. However, the use of that discretion must be tempered by consideration of the discouraging effect upon competition which often results from the making of all bids public without award. For that reason, invitations for bids should be canceled after bid opening only for

"compelling" reasons. Defense Acquisition Regulation (DAR) § 2-404.1(a). Although the Navy contends that here we have a compelling reason exemplified in DAR § 2-404.2(b)(i) ("inadequate or ambiguous specifications were cited in the invitation"), for the reasons stated above we cannot agree.

Accordingly, the protest is sustained. The solicitation should be reinstated and award made to Bentley if otherwise proper.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States